

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RAYMOND WARE,)	CIVIL NO. 04-00671 HG-LEK
)	
Plaintiff,)	
)	
vs.)	
)	
MICHAEL CHERTOFF, Secretary,)	
Department of Homeland)	
Security; JOHN DOES 2-5,,)	
)	
Defendants.)	
_____)	

**REPORT OF SPECIAL MASTER ON PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM TO INCLUDE ADDITIONAL ATTORNEY'S FEES AND COSTS**

On April 7, 2008, Plaintiff Raymond Ware ("Plaintiff") filed his Motion for Attorney's Fees and Related Non-Taxable Costs ("Motion"), seeking an award of \$134,652.05 in attorneys' fees and \$1,646.86 in costs. Plaintiff's fee request represented 369.45 hours at \$350 per hour, plus tax. On June 27, 2008, this Court issued its Report of Special Master regarding the Motion ("Report"). The Court found that, *inter alia*, counsel's requested hourly rate was unreasonable and that a \$280 hourly rate was reasonable. The Court recommended that the district judge award Plaintiff \$96,434.98 in attorney's fees and \$1,646.86 in costs, for a total award of \$98,081.84.

On June 26, 2008, Plaintiff filed the instant Supplemental Memorandum to Include Additional Attorney's Fees and Costs ("Supplemental Request"), seeking \$4,580.63 in attorneys'

fees and \$53.80 in costs incurred since the filing of the Motion. Defendant Michael Chertoff, Secretary, Department of Homeland Security ("Defendant") filed a memorandum regarding the Supplemental Request on July 3, 2008. Assuming that the Court applies the \$280 hourly rate applied in the Report, Defendant does not object to the Supplemental Request.

The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawaii ("Local Rules"). After reviewing the parties' submissions, the Court FINDS and RECOMMENDS that Plaintiff's Supplemental Request be GRANTED IN PART AND DENIED IN PART. The Court recommends that the district judge award Plaintiff \$3,664.50 in attorneys' fees and \$53.80 in costs, for a total award of \$3,718.30.

I. Attorney's Fees

Plaintiff's Supplemental Request includes the following request for attorneys' fees incurred since the filing of the Motion:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Daphne E. Barbee	12.5	\$350	\$4,375.00
	State Excise Tax of 4.7%		<u>\$ 205.63</u>
	TOTAL REQUESTED LODESTAR		<u><u>\$4,580.63</u></u>

[Suppl. Request, Decl. of Counsel ("Counsel Decl."), Exh. A.]

For the reasons set forth in the Report, the Court finds that Plaintiff is entitled to attorneys' fees for work incurred since the filing of the Motion, but that counsel's requested hourly rate is unreasonable. The Court finds that a reasonable hourly rate is \$280. The Court finds that the number of hours in the Supplemental Request is manifestly reasonable.

The Court FINDS that Plaintiff has established the appropriateness of an award of the following attorneys' fees incurred since the filing of the Motion:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Daphne E. Barbee	12.5	\$280	\$3,500.00
	State Excise Tax of 4.7%		\$ 164.50
	TOTAL LODESTAR AWARD		<u>\$3,664.50</u>

II. Costs

Plaintiff's Supplemental Request seeks \$25.00 for a long distance fax transmission and \$12.00 for four copies of Plaintiff's Reply to Defendant's Memorandum in Opposition to Back Pay. Counsel's per page copying cost was \$0.15. [Exh. B to Counsel Decl.] The Court finds that Plaintiff's request for copying costs is consistent with the requirements of the Local Rules and that these costs were reasonably and necessarily incurred in this case. The Court notes that Plaintiff has not submitted any supporting documentation or information about the fax costs. However, for the reasons set forth in the Report and

subject to the admonition therein, the Court finds that Plaintiff's fax costs were reasonably and necessarily incurred in this case. The Court therefore FINDS that Plaintiff is entitled the costs identified in the Supplemental Request.

CONCLUSION

In accordance with the foregoing, this Court, acting as Special Master, FINDS and RECOMMENDS that Plaintiff's Supplemental Memorandum to Include Additional Attorney's Fees and Costs, filed on June 26, 2008, be GRANTED IN PART AND DENIED IN PART. The Court recommends that the district judge award Plaintiff \$3,664.50 in attorneys' fees and \$53.80 in costs, for a total award of \$3,718.30.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, July 3, 2008.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

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